

## **REMARKS/ARGUMENTS**

### **Status of the Claims**

Claims 1-18 remain in the application;  
Claims 5-8, and 15-18 been withdrawn;  
Claim 1 has been amended.

### **Claim rejections under 35 U.S.C. § 102(b)**

Claims 1, 2, and 9-14 stand rejected under 35 USC 102(b) as being anticipated by U.S. Patent No. 5,044,834 (Janopaul).

While it is believed that the above rejection has been rendered moot by Applicants' amendment to the claims at issue, Applicant respectfully disagrees. Janopaul shows and discloses a block having a top surface 28 that includes vertical openings 19 and 21, and an open cell that is defined by side walls 26 and 27, and which is designed to receive backfill material. By contrast, independent claim 1 has been amended to recite the feature of a substantially contiguous top surface.

It is submitted that the reference of Janopaul does not anticipate all of the features recited in amended claim 1 and Applicant respectfully request that the rejection of the claims under 35 USC. 102(b) be withdrawn and passed to issue or, in the alternative, reconsidered and further examined.

### **Claim rejections under 35 USC § 103(a)**

Claims 3 and 4 stand rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 5,044,834 (Janopaul) and further in view of U.S. Patent No. 5,943,827 (Okerlund).

While it is believed that the above rejection has been rendered moot by Applicants' amendment to the claims at issue, Applicant disagrees. Janopaul does not show or disclose a substantially contiguous top surface, as claimed. Instead, Janopaul shows and discloses a block having a top surface 28 that includes vertical openings 19 and 21, and an open cell that is defined by side walls 26 and 27. The vertical openings 19 and 21 of Janopaul are configured to receive portions of offset "Z-shaped" anchors 18 that interlock vertically adjacent blocks together (see, for example, Figure 5) in a predetermined offset distance.

Okerlund shows and discloses a retaining wall block that uses a downwardly extending anchor system 74 that is designed to contact the rear surface of the course of blocks immediately therebelow. Note that Okerlund's anchor system does not interlock vertically adjacent blocks together and a vertically adjacent upper block can move sideways and backwards relative to a lower course of blocks. Okerlund's anchor system only prevents the upper block from moving forwardly relative to the lower course of blocks.

"It is well-established that before a conclusion of obviousness may be based on a combination of references, there must have been a reason, suggestion, or motivation to lead an inventor to combine those references."<sup>1</sup> Contrary to what the Examiner asserts, it would not be obvious to a person having ordinary skill in the art to use the projection of Okerlund "in order to provide additional stability" to the wall of Janopaul.

Janopaul's blocks are already interlocked and prevented from moving forward, backward, sideways, or even rotationally with respect to each other. There is no need for an additional anchor system.

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<sup>1</sup> Pro-Mold and Tool Co. v. Great Lakes Plastics, Inc., 37 USPQ2d 1626, 1629 (Fed. Cir. 1996).

stabilization for a resulting wall. Assuming, arguendo, the possibility of providing Janopaul's blocks with an "anchor system" as taught by Okerlund, one would have to redesign Janopaul's vertical openings and Z-shaped anchors to accommodate the thickness of the tieback 32 over which the anchor system would necessarily encounter and press against the rear surface of a block therebelow. This would increase the tolerances of the vertical openings and the Z-shaped anchors and would result in a less stable wall when the blocks are used without tiebacks.

In addition, the resulting block would selectively deform the sheet of tieback material 32 that is used in conjunction with the block. This selective deformation would create stress points for the tieback material and lead to premature failure of the tieback. Again, this would result in a less stable wall.

It is respectfully submitted that the claims 3 and 4 are not obvious in view of Janopaul and further in view of Okerlund, and Applicant respectfully requests that rejection of the claims under 35 USC. 103(a) be withdrawn and passed to issue or, in the alternative, reconsidered and further examined.

## CONCLUSION

On the basis of the foregoing amendments, remarks, and arguments of record, applicant respectfully submits that claims 1-4, and 9-14 are in condition for allowance and Applicant respectfully requests that a timely Notice of Allowance be issued in this case. Alternatively, if the Examiner is of the opinion that prosecution of the application may be expedited by a telephonic interview, the Examiner is invited to contact applicant's representative at the telephone number listed below.

Respectfully submitted,  
For the Applicants  
By their Attorneys,

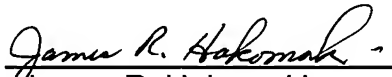
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